

§ 4.156

must be compensated in accordance with the Act's requirements.

§ 4.156 Employees in bona fide executive, administrative, or professional capacity.

The term *service employee* as defined in section 8(b) of the Act does not include persons employed in a bona fide executive, administrative, or professional capacity as those terms are defined in 29 CFR part 541. Employees within the definition of service employee who are employed in an executive, administrative, or professional capacity are not excluded from coverage, however, even though they are highly paid, if they fail to meet the tests set forth in 29 CFR part 541. Thus, such employees as laboratory technicians, draftsmen, and air ambulance pilots, though they require a high level of skill to perform their duties and may meet the salary requirements of the regulations in part 541 of this title, are ordinarily covered by the Act's provisions because they do not typically meet the other requirements of those regulations.

§§ 4.157–4.158 [Reserved]

Subpart D—Compensation Standards

§ 4.159 General minimum wage.

The Act, in section 2(b)(1), provides generally that no contractor or subcontractor under any Federal contract subject to the Act shall pay any employee engaged in performing work on such a contract less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act. Section 2(a)(1) provides that the minimum monetary wage specified in any such contract exceeding \$2,500 shall in no case be lower than this Fair Labor Standards Act minimum wage. Section 2(b)(1) is a statutory provision which applies to the contractor or subcontractor without regard to whether it is incorporated in the contract; however, §§ 4.6 and 4.7 provide for inclusion of its requirements in covered contracts and subcontracts. Because this statutory requirement specifies no fixed monetary wage rate and refers only to the minimum wage specified under section

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6(a)(1) of the Fair Labor Standards Act, and because its application does not depend on provisions of the contract, any increase in such Fair Labor Standards Act minimum wage during the life of the contract is, on its effective date, also effective to increase the minimum wage payable under section 2(b)(1) to employees engaged in performing work on the contract.

[48 FR 49762, Oct. 27, 1983, as amended at 76 FR 18854, Apr. 5, 2011]

§ 4.160 Effect of section 6(e) of the Fair Labor Standards Act.

Contractors and subcontractors performing work on contracts subject to the Service Contract Act are required to pay all employees, including those employees who are not performing work on or in connection with such contracts, not less than the general minimum wage standard provided in section 6(a)(1) of the Fair Labor Standards Act, as amended (Pub. L. 95–151).

§ 4.161 Minimum monetary wages under contracts exceeding \$2,500.

The standards established pursuant to the Act for minimum monetary wages to be paid by contractors and subcontractors under service contracts in excess of \$2,500 to service employees engaged in performance of the contract or subcontract are required to be specified in the contract and in all subcontracts (see § 4.6). Pursuant to the statutory scheme provided by sections 2(a)(1) and 4(c) of the Act, every covered contract (and any bid specification therefor) which is in excess of \$2,500 shall contain a provision specifying the minimum monetary wages to be paid the various classes of service employees engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative in accordance with prevailing rates for such employees in the locality, or, where a collective bargaining agreement applied to the employees of a predecessor contractor in the same locality, in accordance with the rates for such employees provided for in such agreement, including prospective wage increases as provided in such agreement as a result of arm's-length negotiations. In no case may such wages be